

TITLE: CIB 96-26 - Disposition of Program Property

October 23, 1996

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: DISTRIBUTION LIST FAC

FROM: M/OP/OD, Kathryn Cunningham,
Acting Procurement Executive

SUBJECT: Disposition of Program Property

CONTRACT INFORMATION BULLETIN 96-26

The recent Executive Officers' conference in Warsaw surfaced issues relating to disposition of program property when it is no longer needed for the activity for which it was purchased. Historically, it has been USAID's general practice to turn program property over to the Host Country at the conclusion of an activity. Particularly in ENI, but in other countries as well, USAID is conducting activities that are not funded under bilateral agreements (i.e., Project Agreements or Strategic Objective Agreements) where the money is initially obligated to the Host Country. There are many centrally-funded or regional programs and other situations where, for political reasons, USAID cannot deal directly with the Host Government. Thus, in many cases, it may not be appropriate to give the Host Country title to property purchased for an activity. M/AS/OMS, GC/CCM and M/OP/P met to discuss property issues, and this CIB was developed to address the basic problem of what to do with program property at the end of an activity when there is no bilateral agreement with the Host Country.

Beginning with property purchased under contracts, the AIDAR currently requires that the clause at 752.245-71, "Title to and Care of Property," be used in all contracts under which the contractor will acquire property for use overseas under the contract. Since this clause is not appropriate in all circumstances, the prescription is being changed in accordance with the attached AIDAR class deviation. The clause has, however, been included in a number of contracts where we do not have bilateral Project or Strategic Objective Agreements with the Host Country, and at the end of the contract the contractors are turning the property over to USAID. At that point it is USAID's problem to figure out what to do with the property.

As a first step, we have determined that in the case of completed contracts which include the clause at 752.245-71 where we do not have a bilateral agreement with the Host Country, we will construe the contract as if the appropriate FAR clause on U.S. Government property (e.g., 52.245-5 for cost reimbursement, time and material, or labor-hour contracts) were included. Even though the clause providing title to the Host Country is in the contract, in these cases, the Host Country would not have been informed that the property was titled to them. Thus, any property which has been turned over to USAID by the contractor shall be disposed of in accordance with 6 FAM 227. The property may be used for other USAID programs if needed. If it can be used on an activity in another country, the receiving activity shall cover the cost of transportation, but is not required to reimburse any costs for the equipment itself. It is also acceptable for USAID to use such property for administrative (OE-funded), rather than program, purposes. In accordance with the FAR clause, Contracting Officers shall assure that contractors comply with the requirements for final accounting and disposition of Government property at the close of the contract.

The applicable FAR clause shall be included in new contracts, and in existing contracts when they are next amended, in lieu of AIDAR 752.245-71 in those situations where the contract is not funded under a bilateral Project of Strategic Objective Agreement. A decision still may be made at the end of the activity to turn the property over to the Host Country, but property will not be automatically titled to the Host Country.

In the case of grants and cooperative agreements, property purchased under the agreement is generally titled to the recipient. USAID's Assistance Regulation (22 CFR Part 226) does provide for the possibility for property to be titled to the Host Country, and it is expected to be used when the assistance agreement is funded under a bilateral Project or Strategic Objective Agreement with the Host Country. When the recipient has title to property, it may continue to use the property for the program whether or not the program continues to be supported by USAID. The recipient need only request disposition instructions when it has determined that it has not further need for the equipment in any of its activities sponsored by USAID or another Federal agency. See 22 CFR 226.34.

Attachment: a/s

October 18, 1996

ACTION MEMORANDUM

TO: M/OP/OD, Kathryn Cunningham, Acting Director

FROM: M/OP/P, Kathleen O'Hara

SUBJECT: Deviation from AIDAR 752.245-71, Title to and Care of Property, OP-DEV-96-3c

Problem: To deviate from the requirement in AIDAR 752.245-71 to include the clause vesting title to non-expendable property with the Host Country in all USAID contracts under which the contractor will acquire property.

Discussion: Increasingly over the last several years USAID activities are being funded under arrangements that are not part of bilateral project agreements with the Host Country. In many cases under regional programs and centrally funded contracts, there may not be a Host Country agency identified with the activity. In other cases USAID may be working through other entities because it is prohibited from working with the Host Country Government. Thus, for various reasons, the long standing policy that property should be vested in the Host Country is not always appropriate.

Currently, the prescription to AIDAR clause 752.245-71 reads:

It is AID policy to vest title with the cooperating country for contractor acquired property used in a cooperating country. The following clause is for use in all AID contracts under which the contractor will acquire property for use overseas under the contract.

A class deviation is requested to revise the prescription to read:

The following clause shall be included in all contracts when the contractor will acquire property under the contract for use overseas and the contract is funded under a Strategic Objective agreement (or similar agreement) with the cooperating country which obligates the funds.

We plan to amend the AIDAR to incorporate this change. This class deviation shall expire two years from the date of approval or upon incorporation in the AIDAR, whichever is sooner.

Recommendation: That you approve this class deviation by signing below.

Approved: /s/

Disapproved: _____

Date: 10/21/96